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November 1, 2013

The Honorable Kiyo A. Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East, Room N406
Brooklyn, NY 11201

Re: Boda v. Detective Phelan, New York City, B.M. (Index No. 11-cv-28)

Dear Judge Matsumoto:

We are counsel to Defendant B.M. in the above-captioned case. Defendant B.M. filed her Motion for Summary Judgment (and accompanying paper) by ECF today, November 1, 2013. We are writing to inform the Court that Plaintiff has not opposed the motion and request that the motion be decided on Defendant B.M.'s papers.

In accordance with the Court's scheduling order dated June 12, 2013, Defendant B.M. served Plaintiff and counsel for Defendants Det. Phelan and City of New York with her motion papers on July 12, 2013. Defendant B.M. also served Plaintiff with the Notice to *Pro Se* Litigant who Opposes Motion for Summary Judgment, full copies of Fed. R. Civ. Proc. 56 and Local Rule 56.1, and, pursuant to E.D.N.Y. Local Court Rule 7.2, copies of the cases cited by Defendant B.M. that are unpublished or reported only on electronic databases.¹

Pursuant to the Court's scheduling order, Plaintiff's opposition papers were to be mailed to Defendants on or before October 15, 2013 and Defendant B.M.'s reply papers were to be served to Plaintiff and filed along with the original motion papers and opposition papers on November 1, 2013.

As of November 1, 2013, Defendant B.M. (including her counsel) has not received Plaintiff's opposition. Therefore, Defendant B.M. requests by this letter that her Motion for Summary Judgment be decided upon Defendant B.M.'s unopposed motion and supporting papers. *See Routier v. O'Hara*, 2013 U.S. Dist. LEXIS 99947, at *12 (E.D.N.Y. July 16, 2013)

¹ Defendant B.M.'s opening motion and supporting papers were served on Plaintiff at George Motchan Detention Center, 15-15 Hazen Street, East Elmhurst, New York 11370 by Federal Express. Upon information and belief, Plaintiff was released from custody sometime after he was served with (and received) the motion. Plaintiff has not informed Defendant B.M., her counsel, or the Court of a new mailing address for him. A copy of this letter will be sent to Plaintiff at the return address on his letter to the Court filed on August 23, 2013 (ECF 68).

The Honorable Kiyo A. Matsumoto

2

November 1, 2013

(granting defendant's summary judgment motion and finding that when a *pro se* non-moving party "fails to oppose a summary judgment motion, the court may 'grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it.'" (quoting Fed. R. Civ. P. 56(e)).

Respectfully submitted,

/s/ Michael Schaper

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